

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HIAWATHA ROSS,

Case No. 3:20-cv-00702-MMD-WGC

Plaintiff,

ORDER

v.

ROSS STORES, INC.,

Defendant.

Pro se Plaintiff Hiawatha Ross brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF No. 5), recommending the Court dismiss this action with prejudice. Ross had until January 17, 2022, to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will dismiss this case.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

Because there is no objection, the Court need not conduct de novo review, and is satisfied Judge Cobb did not clearly err. Ross initiated this action on December 18, 2020.

1 (ECF No. 1-1.) The Court screened the complaint and granted Ross' application to
2 proceed *in forma pauperis* in late March 2021. (ECF Nos. 3.) The Court dismissed Ross'
3 complaint but granted Ross leave to amend. (*Id.*) In its screening order, the Court clearly
4 stated that Ross had 30 days to file an amended complaint, and if Ross "fails to file an
5 amended complaint within the 30 days, the action may be dismissed." (*Id.* at 11.) Ross
6 failed to file an amended complaint or any other notice with the Court.

7 A court may dismiss an action based on a party's failure to obey a court order or
8 comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
9 (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep
10 court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)
11 (dismissal for failure to comply with court order). In determining whether to dismiss an
12 action on one of these grounds, the Court must consider: (1) the public's interest in
13 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
14 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
15 merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine*
16 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal*
17 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

18 The first two factors, the public's interest in expeditiously resolving this litigation
19 and the Court's interest in managing its docket, weigh in favor of dismissal of Ross' case.
20 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because
21 a presumption of injury arises from the occurrence of unreasonable delay in filing a
22 pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
23 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
24 cases on their merits—is greatly outweighed by the factors favoring dismissal.

25 The fifth factor requires the Court to consider whether less drastic alternatives can
26 be used to correct the party's failure that brought about the Court's need to consider
27 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
28 that considering less drastic alternatives before the party has disobeyed a court order

1 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
2 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
3 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court’s
4 order as satisfying this element[.]” i.e., like the “initial granting of leave to amend coupled
5 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
6 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
7 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
8 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without
9 an operative complaint and Ross has not filed an amended complaint, the Court finds that
10 alternatives to dismissal are not workable. Setting another deadline is not a meaningful
11 alternative given these circumstances. The fifth factor therefore also favors dismissal. The
12 Court is therefore satisfied that Judge Cobb’s reasoning is correct. Having reviewed the
13 R&R and the record in this case, the Court will adopt the R&R in full.

14 It is therefore ordered that Judge Cobb’s Report and Recommendation (ECF No.
15 5) is accepted and adopted in full.

16 It is further ordered that this case is dismissed with prejudice.

17 The Clerk of Court is directed to enter judgment accordingly and close this case.

18 DATED THIS 20th Day of January 2022.

19
20 

21 MIRANDA M. DU
22 CHIEF UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28